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In re Application of
Akira Maruyama et al
Application No. 10/695,440
Filed: October 29, 2003
Attorney Docket No. Q78195

: **OFFICE OF PETITIONS**
:
: **DECISION GRANTING FILING**
: **DATE OF OCTOBER 29, 2003**
:

This is a decision on the petition filed July 12, 2004, which is being treated as a petition under 37 CFR 1.53, requesting that the above-identified application be accorded a filing date of October 29, 2003.

The petition is **granted**.

The application was deposited on October 29, 2003. However, on May 11, 2004, the Office of Initial Patent Examination Division mailed a "Notice To File Missing Parts Of Nonprovisional Application," stating that page nine (9) of the specification was omitted from the application on filing.

In response, on July 12, 2004, the instant petition and a copy of the specification which include page nine (9) was submitted. The papers were accompanied by a copy of applicant's postcard receipt that acknowledges receipt of forty-four (44) pages of the specification and one (1) sheet of the abstract on October 29, 2004. A review of the application file does not show the presence of page nine (9) of the specification.

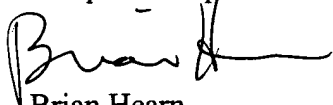
MPEP 503 states that "A postcard receipt which itemizes and properly identifies the papers which are being filed serves as *prima facie* evidence of receipt in the USPTO of all the items listed thereon on the date stamped thereon by the USPTO." Accordingly, since the evidence supports the fact that page nine (9) of the specification was in fact present on filing, the Notice mailed May 11, 2004 is vacated.

Since page nine (9) of the specification cannot be located in the Office, the copy of page nine (9) of the specification supplied on July 12, 2004 will be used for processing and examination purposes.

The petition fee of \$130.00 is unnecessary and will be refunded to counsel's deposit account, No. 19-4880.

This matter is being referred to the Office of Initial Patent Examination Division for processing with a filing date of **October 29, 2003**, and using page nine (9) of the specification supplied on July 12, 2004, and with an indication that page nine (9) was present on filing, and for mailing of a corrected filing receipt.

Telephone inquiries concerning this matter may be directed to Karen Creasy at (571) 272-3208.

A handwritten signature in black ink, appearing to read "Brian Hearn", with a stylized flourish at the end.

Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy